IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6259 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AESCULAPIUS REMEDIES LTD

Versus

UNION OF INDIA

Appearance:

MR AR GUPTA for Petitioner

MR MUKESH R SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/10/2000

ORAL JUDGEMENT

Rule. Mr.Mukesh R.Shah waives service of rule for respondents. With the consent of learned counsel for parties, the matter is taken up for final disposal.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 14.2.2000 passed by the Additional Director General of Foreign Trade, New Delhi (at annexure "A" to the petition) dismissing the petitioner's appeal against the

adjudication order dated 3.8.1999 passed by the Deputy Director of Foreign Trade, Ahmedabad. By the adjudication order dated 3.8.1999 the petitioner was required to pay Rs.24,44,160/- by way of penalty for nonsubmission of export documents against advance licence dated 4.3.1999. The order was passed by the Deputy Director after observing that inspite of opportunity of personal hearing given to the petitioner, the petitioner did not remain present or submitted any defence. In appeal the appellate authority passed a conditional order on the stay application preferred by the petitioner. As per the said order, stay of operation of adjudication order was granted on condition that the petitioner shall deposit a sum of Rs.5 lacs. On account of nonfulfillment of that condition the impugned order dated 14.2.2000 came to be passed dismissing the petitioner's appeal.

3. In view of the course this Court proposes to adopt, it is not necessary to set out the facts in detail. Suffice it to state that under the licence the petitioner was required to export Tetracycline. According to the petitioner, the petitioner could not fulfill the said export obligation because as a matter of fact the petitioner was prevented from fulfilling the export obligation on account of plague epidemic in the year 1994, the petitioner had pointed out this relevant fact before the Deputy Director and Director General vide petitioner's letter dated 26.8.98 and various other letters and reminders(at annexure "I" collectively). Reference is also made to letter dated 6.1.1999 wherein the petitioner informed the concerned authorities that the petitioner remained personally present for personal hearing on 5.1.1999 but the concerned authority was not available and requested for another date. It appears that inspite of aforesaid letters, the Deputy Director passed the order dated 3.8.1999 imposing the aforesaid penalty on the ground that the petitioner had not fulfilled its export obligation.

4. In view of the above and other defences pleaded by the petitioner, the appellate authority ought to have considered the same for the purpose of deciding whether any amount was required to be deposited by the petitioner as a pre-condition for entertaining the appeal. In the facts and circumstances of the case, it appears to this Court that the appellate authority ought not to have required the petitioner to deposit any amount as a pre condition for entertaining the appeal.

5. In view of the above discussion, the petition is allowed and the impugned order dated 14.2.2000 passed by

respondent No.2 is hereby quashed and set aside and the appellate authority is directed to hear and decide the appeal on merits without requiring the petitioner to deposit any amount, as expeditiously as possible and preferably within four months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier. The petitioner shall cooperate with the appellate authority for expeditious disposal of the appeal.

6. Rule is made absolute in terms of the aforesaid directions. There shall be no order as to costs.

12.10.2000 (M.S.SHAH,J)